

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FALCON ENTERPRISES, INC., *et al.*,

Plaintiffs,

vs.

CENTURION LTD., *et al.*,

Defendants.

No. C07-0065RSL

ORDER GRANTING DEFENDANT  
CENTURION LTD.'S MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION

This matter comes before the Court on defendant Centurion Ltd.'s "Motion to Dismiss for Insufficiency of Service of Process Pursuant to Fed. R. Civ. P. 12(b)(5), Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2), and *Forum Non Conveniens*." Dkt. # 8. Plaintiffs filed their original complaint against Centurion on January 16, 2007. A First Amended Complaint was filed a week later naming three additional defendants. Centurion seeks dismissal of plaintiffs' claims because (1) service of the original complaint was insufficient; (2) the Court lacks personal jurisdiction over Centurion; and (3) trial in this forum would be oppressive and vexatious. Centurion also seeks an award of attorney's fees under RCW 4.28.185(5).

**A. Service of Process**

Plaintiffs attempted to serve Centurion with the original complaint and summons by delivering a copy to George Dranichak at a hotel in Las Vegas, Nevada. Although Dranichak

1 is in some way related to Centurion, defendant denies that he is an officer, a managing or  
2 general agent, or an authorized recipient of service of process for the company. After  
3 Centurion's motion to dismiss was fully briefed, plaintiffs served Centurion with a summons and  
4 a copy of the First Amended Complaint at its office in Toronto, Canada, pursuant to Fed. R. Civ.  
5 P. 4. See Dkt. # 17. Any defects in the original service are now moot and defendant has not  
6 challenged the service of the First Amended Complaint.<sup>1</sup>

7 **B. Personal Jurisdiction**

8 Plaintiffs have the burden of demonstrating that the Court may exercise personal  
9 jurisdiction over defendant. Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1108 (9th Cir. 2002).  
10 Because the Court did not conduct an evidentiary hearing, plaintiff "need only make a prima  
11 facie showing of jurisdiction . . . ." Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir.  
12 1995). In evaluating defendant's jurisdictional contacts, the Court accepts uncontroverted  
13 allegations in the complaint as true. AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588  
14 (9th Cir. 1996). "Conflicts between the parties over statements contained in affidavits must be  
15 resolved in plaintiff's favor." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800  
16 (9th Cir. 2004).

17 Although "[t]he district court's determination of a party's amenability to suit is  
18 made by reference to the law of the state in which it sits" (Peterson v. Kennedy, 771 F.2d 1244,  
19 1262 n.12 (9th Cir. 1985)), the Washington Supreme Court has held that Washington's long-arm  
20 statute, RCW 4.28.185, "extends jurisdiction to the limit of federal due process." Shute v.  
21 Carnival Cruise Lines, 113 Wn.2d 763, 771 (1989). Thus, the Court need determine only  
22 whether the exercise of jurisdiction comports with federal constitutional requirements. Chan v.  
23 Society Expeditions, Inc., 39 F.3d 1398, 1404-05 (9th Cir. 1994). Under this analysis, plaintiff  
24 must show that defendant had "certain minimum contacts with [the forum] such that the  
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26 <sup>1</sup> Centurion's motion to strike the testimony and affidavit of the original process server is  
27 DENIED.

1 maintenance of the suit does not offend traditional notions of fair play and substantial justice.”  
2 International Shoe Co v. State of Washington, Office of Unemployment Compensation and  
3 Placement, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). A defendant’s contacts  
4 with the forum state are reviewed using a three-part test, such that jurisdiction<sup>2</sup> exists where  
5 (1) the nonresident defendant has done some act or consummated some transaction with the  
6 forum or performed some act by which he purposefully availed himself of the privilege of  
7 conducting activities in the forum, thereby invoking the benefits and protections of its laws,  
8 (2) the claim arises out of or results from the defendant’s forum-related activities, and (3) the  
9 exercise of jurisdiction would be reasonable. Omeluk v. Langsten Slip & Batbyggeri A/S, 52  
10 F.3d 267, 270 (9th Cir. 1995) (citing Data Disc, Inc. v. Systems Tech. Assoc., Inc., 557 F.2d  
11 1280, 1287 (9th Cir. 1977)). The “purposeful availment” requirement ensures that a party has  
12 sufficient contacts with the forum state to put him on notice that he could be haled into court  
13 there: “random, fortuitous, or attenuated contacts” are not enough to satisfy the constitutional  
14 requirements. Ziegler, 64 F.3d at 473 (internal quotation marks omitted).

15 Plaintiffs allege that Centurion has displayed plaintiffs’ copyrighted pictures on  
16 the worldwide web and has illegally provided the images to third party “affiliates.” Plaintiffs  
17 argue that jurisdiction is proper in Washington because individuals in Washington State viewed  
18 or “documented” these pictures and because Centurion has on-going business relationships with  
19 numerous Washington citizens. Such activities may, given the right circumstances, constitute  
20 purposeful availment. See, e.g., Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)  
21 (minimum contacts exist where defendant deliberately engages in significant activity within the  
22 forum or creates continuing obligations between itself and forum residents). Centurion contests  
23 the factual and/or legal significance of each of plaintiffs’ forum-related allegations, however,  
24 and plaintiffs have not provided any admissible evidence in support thereof.

25 Plaintiffs allege only one publication of the copyrighted pictures to a Washington  
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27 <sup>2</sup> Plaintiff has not argued that general jurisdiction over defendant exists in this case.

1 citizen. It appears that plaintiffs and their counsel have programmed a computer in Seattle to  
2 search the web and download the copyrighted images as a means of “documenting”  
3 infringements. Because the focus of the jurisdictional analysis is the nature and scope of  
4 defendant’s contacts with the forum, it is not clear whether plaintiffs’ unilateral investigative  
5 actions should be counted against defendant. Assuming, for purposes of this motion, that  
6 plaintiff’s viewing of the images does count in the jurisdictional analysis, it is hard to imagine  
7 how this single incident (or even a handful of similar incidents) could be deemed “significant  
8 activity within the forum.”

9           With regards to plaintiffs’ allegations regarding defendant’s on-going business  
10 relationships in Washington, plaintiffs have been unable to identify any individuals within  
11 Washington who have purchased a subscription package from Centurion or who have enrolled as  
12 a Centurion “affiliate” other than Jeff Cully. Cully’s enrollment as a Centurion “affiliate”  
13 occurred in March 2007, months after this litigation was filed. Because the due process clause  
14 requires that a person have fair warning that his conduct within the forum may subject him to  
15 litigation there, such post-filing contacts cannot constitute purposeful availment and clearly do  
16 not give rise to this case. Johnson v. Woodcock, 444 F.3d 953, 955-56 (8th Cir. 2006)  
17 (“Minimum contacts must exist either at the time the cause of action arose, the time the suit was  
18 filed, or within a reasonable period of time immediately prior to the filing of the lawsuit.”); Steel  
19 v. United States, 813 F.2d 1545, 1549 (9th Cir. 1987) (noting that “courts must examine the  
20 defendant’s contacts with the forum at the time of the events underlying the dispute when  
21 determining whether they have jurisdiction”).

22           Having reviewed the memoranda, declarations, and exhibits submitted by the  
23 parties and having resolved any actual conflicts in the evidence in plaintiffs’ favor, the Court  
24 finds that Centurion’s posting of the copyrighted images on the worldwide web with only one  
25 instance of viewing within the forum and no on-going subscription or affiliate relationships does  
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1 not constitute purposeful availment.<sup>3</sup> Apparently recognizing that defendant's conduct in and  
2 towards Washington was extremely limited, plaintiffs invoke the nationwide jurisdictional  
3 analysis authorized by Fed. R. Civ. P. 4(k)(2). Rule 4(k)(2) is designed to correct a "gap in the  
4 enforcement of federal law" which arises when a foreign defendant has contacts with the United  
5 States sufficient to justify the application of United States law but has insufficient contacts with  
6 any one state to satisfy the long-arm statute or meet the requirements of the Fourteenth  
7 Amendment. Advisory Committee Notes to 1993 Amendments. If (a) plaintiff's claim arises  
8 under federal law, (b) defendant is beyond the jurisdictional reach of any state court of general  
9 jurisdiction, and (c) defendant has sufficient minimum contacts with the United States as a  
10 whole such that the maintenance of suit does not offend traditional notions of fair play and  
11 substantial justice, jurisdiction over a foreign defendant is proper under Rule 4(k)(2). Holland  
12 Am. Line, Inc. v. Wärtsilä N. Am., Inc., 485 F.3d 450, 461 (9th Cir. 2007); Glencore Grain  
13 Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1126 (9th Cir. 2002).

14 Plaintiffs' claims of copyright infringement under 17 U.S.C. § 501 *et seq.* satisfy  
15 the first condition of Rule 4(k)(2). It appears, however, that Centurion would be susceptible to  
16 suit in other states, thereby negating the second condition. Plaintiffs rely on a burden-shifting  
17 framework adopted by the Ninth Circuit to argue that defendant, having failed to identify a state  
18 in which it is willing to concede jurisdiction, should be forced to defend in Washington. As  
19 stated by the Ninth Circuit,

20 [a] defendant who wants to preclude use of Rule 4(k)(2) has only to name some  
21 other state in which the suit could proceed. Naming a more appropriate state  
22 would amount to a consent to personal jurisdiction there . . . . If, however, the  
23 defendant contends that he cannot be sued in the forum state and refuses to  
24 identify any other where suit is possible, then the federal court is entitled to use  
Rule 4(k)(2). This procedure makes it unnecessary to traipse through the 50 states,  
asking whether each could entertain the suit.

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26 <sup>3</sup> The conclusory and wholly unsupported statements contained in Jason Tucker's declarations  
27 regarding Centurion's "numerous" affiliates and paying members within Washington are inadmissible and  
do not raise a conflict in the evidence.

1 Holland Am. Line, 485 F.3d at 461 (quoting ISI Int'l, Inc. v. Borden Ladner Gervais LLP, 256  
2 F.3d 548, 552 (7th Cir. 2001)). The Court interprets the “is entitled to” language to mean what  
3 its says, namely that the Court has the option to presume that nationwide service is appropriate if  
4 defendant refuses to identify an alternative forum but that it is not required to do so.

5           Given the facts of this case, the Court declines to impose jurisdiction under Rule  
6 4(k)(2). It is apparent from the papers filed by the parties that there are, in fact, states in which  
7 Centurion is subject to the personal jurisdiction of the courts. For example, the courts of a state  
8 in which Centurion maintains a server for posting the infringing images on the worldwide web  
9 and/or where Centurion has contractually obligated itself to share the copyrighted images with  
10 affiliates could exercise personal jurisdiction over defendant. Illegal downloads/transfers can be  
11 tracked, as the music industry daily shows, to identify the location of these significant events.  
12 Rather than perform the pre-filing investigation necessary to generate adequate jurisdictional  
13 allegations, plaintiffs filed suit in Washington based on unfounded assumptions, tried to  
14 manufacture jurisdictional contacts in the state, and now seek to use Rule 4(k)(2) to wring a  
15 jurisdictional waiver from Centurion. The Court is not inclined to reward plaintiffs for such  
16 practices and declines to remedy the shortcomings of its jurisdictional showing by using Rule  
17 4(k)(2).

18           Although plaintiffs have requested permission to take jurisdictional discovery, they  
19 have not identified any specific discovery that they are prepared to undertake. When the Court  
20 pointed out deficiencies in their initial submission and gave them an opportunity to supplement  
21 the record, plaintiffs simply regurgitated conclusory statements without providing a foundation  
22 or otherwise seeking to obtain the information requested by the Court. Their request for  
23 discovery is therefore DENIED. Because it appears that this suit can be brought in other  
24 jurisdictions, however, the dismissal will be without prejudice.


25 **C. *Forum Non Conveniens***

26           Centurion also seeks dismissal of plaintiffs’ claims on *forum non conveniens*  
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1 grounds, arguing that Canada or The Netherlands would be a better forum to resolve the current  
2 dispute. Given that plaintiffs' claims against Centurion will be dismissed for lack of personal  
3 jurisdiction, the Court need not determine whether this forum is "so oppressive and vexatious to  
4 the defendant 'as to be out of proportion to plaintiff's convenience.'" Tuazon v. R.J. Reynolds  
5 Tobacco Co., 433 F.3d 1163, 1180 (9th Cir. 2006) (quoting Ravelo Monegro v. Rosa, 211 F.3d  
6 509, 514 (9th Cir. 2000)).

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8 For the reasons discussed above, Centurion's motion to dismiss for lack of  
9 personal jurisdiction (Dkt. # 8) is GRANTED. Plaintiffs' claims against Centurion are hereby  
10 DISMISSED without prejudice. Defendants' request for attorney's fees is DENIED.

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12 DATED this 18th day of October, 2007.

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14 Robert S. Lasnik  
15 United States District Judge  
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